

**RULES  
OF  
TENNESSEE DEPARTMENT OF HUMAN SERVICES  
REHABILITATION SERVICES DIVISION**

**CHAPTER 1240-8-5  
SERVICES TO INDIVIDUALS: RELATED PROVISIONS**

**TABLE OF CONTENTS**

1240-8-5-.01	Order of Selection and Priority Categories	1240-8-5-.05	Review of Extended Employment in Rehabilitation Facilities
1240-8-5-.02	Participation in Costs	1240-8-5-.06	Tennessee Rehabilitation Center
1240-8-5-.03	Consideration of Comparable Services or Benefits and Subrogation	1240-8-5-.07	Tennessee Vocational Training Center Program
1240-8-5-.04	Confidentiality		

**1240-8-5-.01 ORDER OF SELECTION AND PRIORITY CATEGORIES.**

- (1) The purpose of the Order of Selection is to provide an organized method of serving selected groups of individuals if resources are not available to serve all eligible persons who apply. The division director shall determine when and if the Order of Selection will be implemented. Individuals previously declared eligible for Vocational Rehabilitation services and receiving services under an Individualized Plan for Employment (IPE) are not affected when the Order of Selection is implemented. The Order of Selection shall not regulate the provision or authorization of diagnostic evaluations or post-employment services.
- (2) After implementation of an Order of Selection, each individual determined eligible for services must be placed into a priority category with consideration to the following:
  - (a) Each eligible individual will be placed into the highest category justified, according to the provisions in paragraph (3).
  - (b) A rationale for the priority will be documented in each individual's case record.
  - (c) An eligible individual may be placed into a higher priority category as circumstances justify the reclassification; however, individuals will not be reclassified into a lower priority category once services are developed in an IPE and agreed to by the individual as documented by obtaining his or her signature.
  - (d) Each eligible individual who is assigned a priority category that is closed will be notified in writing.
- (3) The Order of Selection Priority Categories are as follows; the lowest numerical category to the highest priority:
  - (a) Category I  
Eligible individuals who are most significantly disabled.
  - (b) Category II  
Eligible individuals who are significantly disabled.
  - (c) Category III  
Eligible individuals who are non-significantly disabled whose Vocational Rehabilitation is expected to require multiple Vocational Rehabilitation services.
  - (d) Category IV

(Rule 1240-8-5-.01, continued)

Eligible individuals who are non-significantly disabled that cannot be classified into a higher priority category.

- (4) An individual who receives SSI or SSDI based on disability or blindness is presumed to be an individual with a significant disability.
- (5) When an Order of Selection is implemented those individuals who are placed into an open priority category may be served under an IPE and those individuals who are placed in a closed priority category may not be served until the Order of Selection is lifted.
- (6) Definitions of terms used in describing an Order of Selection are as follows:
  - (a) “Order of Selection” means an organized equitable method for serving individuals when all eligible persons who apply cannot be served due to limited funds.
  - (b) “Priority Category” means the classification of eligible individuals according to priority for receipt of vocational rehabilitation services under an order of selection.
  - (c) “Significantly Disabled” means an individual who meets the three (3) following criteria:
    - 1. The individual has a severe physical or mental disability which seriously limits at least one functional capacity (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome.
    - 2. The individual’s vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time.
    - 3. The individual has one or more physical or mental disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental retardation, mental illness, multiple sclerosis, muscular dystrophy, musculo-skeletal disorders, neurological disorders (including stroke and epilepsy), spinal cord conditions (including paraplegia and quadriplegia), sickle cell anemia, specific learning disability, end-stage renal disease, or another disability or combination of disabilities determined on the basis of an assessment for determining eligibility and vocational rehabilitation needs to cause comparable substantial functional limitation.
  - (d) “Most Significantly Disabled” means an individual who meets the criteria for significantly disabled in (c) but whose physical or mental disability seriously limits two or more functional capacities.
  - (e) “Non-Significantly Disabled” means an individual who does not meet the criteria for significantly disabled or the criteria for most significantly disabled.
  - (f) “Multiple Vocational Rehabilitation Services” means two or more major vocational rehabilitation services, i.e. physical or mental restoration, training, counseling and guidance, or placement. Excluded are support services such as transportation, maintenance, and the routine counseling and guidance that should take place in every case.
  - (g) “Extended Period of Time” means six (6) months or more from the date services are initiated.

**Authority:** T.C.A. §§4-5-202, 71-1-104, 71-1-105, 49-11-601 et seq., 34 CFR §§361.5 and 361.36, and Executive Order No. 43. **Administrative History:** Original rule filed September 30, 1985; effective October 30, 1985. Amendment filed July 12, 2002; effective September 25, 2002.

**1240-8-5-.02 PARTICIPATION IN COST.**

- (1) Each eligible individual is encouraged to participate in the cost of purchased services. Services not based on economic need do not require the individual's participation. However, services based on economic need will be provided only after applying the individual's resources toward the cost. A financial need procedure for determining whether participation is required, and the amount of such participation, is contained in Section 2010.00 of the Vocational Rehabilitation Policy Manual.
- (2) When the eligible individual is entitled to money or benefits in compensation for an accident which caused or contributed to the vocational rehabilitation eligibility, the agency requires reimbursement for the cost of rehabilitation services except as exempt by law.

**Authority:** T.C.A. §§4-5-202, 14-1-104, 14-1-105, 49-11-601 et seq., 71-1-104, 71-1-105, 34 CFR §§361.47 and 361.54, and Executive Order No. 43. **Administrative History:** Original rule filed September 30, 1985; effective October 30, 1985. Amendment filed July 12, 2002; effective September 25, 2002.

**1240-8-5-.03 CONSIDERATION OF COMPARABLE SERVICES OR BENEFITS AND SUBROGATION.**

- (1) In determining what services are provided to an individual and the scope of such services, the Agency will consider the availability of comparable services and benefits. If comparable services or benefits exist they must be used to meet in whole or in part the cost of Rehabilitation Services. Such benefits to be considered must be adequate, timely, and not delay services to an individual who is at extreme medical risk. The following services are exempt from a determination of comparable services or benefits:
  - (a) Evaluation to determine eligibility, rehabilitation needs, or priority for services.
  - (b) Counseling, guidance, and referral services.
  - (c) Vocational and other training including vocational adjustment training, books, tools, and other training materials not provided in institutions of higher education.
  - (d) Placement services.
  - (e) Rehabilitation Engineering services.
  - (f) Post-employment services consisting of the services listed in (a) through (e) above.
- (2) The Division of Rehabilitation Services will not sponsor an individual to an institution of higher education unless the individual's application to the agency is made sixty (60) days or more before the school term begins.
- (3) Vocational and other training services in institutions of higher education may not be paid for with funds under this part unless maximum efforts have been made by the State unit and the individual to secure grant assistance in whole or in part from other sources to pay for the training. Institutions of higher education include universities, colleges, community/junior colleges, vocational schools, technical institutes, or hospital schools of nursing. Comparable benefits do not include awards and scholarships based on merit.
- (4) When Agency funds are expended on behalf of an individual for goods or services that a third party is or becomes legally obligated to pay, the Agency is subrogated to the rights of the individual to receive such payment. By accepting or receiving such Agency funds, the individual is deemed to have agreed to and authorized such subrogation.

(Rule 1240-8-5-.03, continued)

**Authority:** T.C.A. §§4-5-202, 71-1-104, 71-1-105, 49-11-601 et seq., 34 CFR §361.53, and Executive Order No. 43. **Administrative History:** Original rule filed September 30, 1985; effective October 30, 1985. Amendment filed July 12, 2002; effective September 25, 2002.

#### **1240-8-5-.04 CONFIDENTIALITY.**

- (1) All information as to personal facts involving individuals applying for or receiving services given or made available to agency employees, in the course of the administration of the vocational rehabilitation program, is confidential.
- (2) The use of such information and records is limited to purposes directly connected with the administration of the vocational rehabilitation program.
- (3) Information is not to be disclosed directly or indirectly, other than in the administration of the vocational rehabilitation program, unless the consent of the individual has been obtained in writing.
- (4) The Division of Rehabilitation Services shall, upon the individual's written request, release all information in the individual's record to the individual or the individual's representative except that medical, psychological or other information deemed harmful to the individual will only be released to the individual through a designated third party and if the information came from another entity, the state must follow the conditions for release of such information established by that entity.
- (5) The agency may release confidential information, including medical and psychological data, without the written consent of the individual when the person or agency receiving the information is providing a service to the individual and provides assurance that:
  - (a) The confidential nature of the information shall be preserved.
  - (b) The information is used for the purpose for which it was made available.
  - (c) The use of the information is related to the purpose and functions of the agency to which it is given.
- (6) The agency may release information to an individual or organization engaged in research when the purpose is directly connected with the administration of the State vocational rehabilitation program and only after the individual or organization has furnished satisfactory assurance that information shall be used only for the purpose it was provided and:
  - (a) It shall not be released to persons not connected with the study under consideration.
  - (b) The final product of the research shall not reveal any information that may identify any person who did not provide written consent to release the information.
- (7) Reports, surveys, case studies, research projects and other information released to agencies and individuals by counselors and other agency personnel may contain statistical information and data essential to the advancement of the program, but no information identifiable with any individual shall be included without the written permission of that individual.
- (8) Release of Personal Information.
  - (a) The agency may release personal information to an organization, agency, or individual engaged in audit, evaluation, or research only for purposes directly connected with the administration of the vocational rehabilitation program or for purposes that would significantly improve the

(Rule 1240-8-5-.04, continued)

quality of life for applicants and eligible individuals and only if the organization, agency or individual assures that:

1. the information will be used only for the purposes for which it is being provided;
  2. the information will be released only to persons officially connected with the audit, evaluation, or research;
  3. the information will not be released to the involved individual; the information will be managed in a manner to safeguard confidentiality;
  4. and the final product will not reveal any personal identifying information without the informed written consent of the involved individual or the individual's representative.
- (b) Personal information will be released in response to investigations in connection with law enforcement, fraud, or abuse, unless expressly prohibited by Federal or State laws or regulations, and in response to an order issued by a judge, magistrate, or other authorized judicial officer.
- (c) Personal information may be released in order to protect the individual or others if the individual poses a threat to his or her safety or to the safety of others.
- (9) All documents containing information on the individual and in possession of the Division are the property of the Division of Rehabilitation Services.

**Authority:** T.C.A. §§4-5-202, 14-1-104, 14-1-105, 49-11-601 et seq., 71-1-104, 71-1-105, 34 CFR §§361.38 and 361.49, and Executive Order No. 43. **Administrative History:** Original rule filed September 30, 1985; effective October 30, 1985. Amendment filed July 12, 2002; effective September 25, 2002.

#### **1240-8-5-.05 REVIEW OF EXTENDED EMPLOYMENT IN REHABILITATION FACILITIES.**

The Division conducts periodic reviews and re-evaluations of the status of individuals who have been in extended employment within rehabilitation facilities. These re-evaluations are conducted annually for two (2) years, and thereafter if requested by the individual or the individual's representative, to determine the feasibility of competitive employment or of training the individual for future employment in the competitive labor market. A maximum effort is made to place individuals in competitive employment or training that leads to competitive employment in an integrated setting.

**Authority:** T.C.A. §§4-5-202, 71-1-104, 71-1-105, 49-11-601 et seq., 34 CFR §361.55, and Executive Order No. 43. **Administrative History:** Original rule filed September 30, 1985; effective October 30, 1985. Amendment filed July 12, 2002; effective September 25, 2002.

#### **1240-8-5-.06 TENNESSEE REHABILITATION CENTER.**

- (1) The Tennessee Rehabilitation Center is a statewide comprehensive rehabilitation and training center for individuals receiving services from the Agency. The residential facility provides services including, but not limited to, physical and occupational therapy, medical services, vocational evaluation, personal and social evaluation, personal adjustment training, work adjustment training, vocational training and counseling.
- (2) Generally, referrals to the Center will be applicants or eligible individuals of the Division of Rehabilitation Services. The district Vocational Rehabilitation Counselor will be responsible for initiating referrals to the Center.

(Rule 1240-8-5-.06, continued)

**Authority:** T.C.A. §§4-5-202, 71-1-104, 71-1-105, 49-11-601 et seq., 34 CFR §361.51, and Executive Order No. 43. **Administrative History:** Original rule filed September 30, 1985; effective October 30, 1985. Amendment filed July 12, 2002; effective September 25, 2002.

**1240-8-5-.07 TENNESSEE VOCATIONAL TRAINING CENTER PROGRAM.**

- (1) The Tennessee Vocational Training Center Program is comprised of nineteen (19) Centers in rural areas that provide an array of services including but not limited to vocational evaluation, personal and work adjustment both in Centers and the community, job placement, and follow-up.
- (2) Generally, referrals are made by the Vocational Rehabilitation Counselor and will be an applicant or eligible individual of the Division of Rehabilitation Services.

**Authority:** T.C.A. §§4-5-202, 71-1-104, 71-1-105, 49-11-601 et seq., 49-11-701 et seq., 34 CFR §361.51, and Executive Order No. 43. **Administrative History:** Original rule filed September 30, 1985; effective October 30, 1985. Amendment filed July 12, 2002; effective September 25, 2002.